

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSALYN CONLEY, et al.,
Plaintiffs,

v.

KING COUNTY, DEPARTMENT OF
YOUTH SERVICES,
Defendant.

CASE NO. C04-5269JLR

ORDER

I. INTRODUCTION

This matter comes before the court on Defendant's Motion for Summary Judgment (Dkt. # 17). Having read the papers filed in connection with this motion, and having heard oral argument, the court GRANTS Defendant's motion and dismisses Plaintiffs' case in its entirety.

II. BACKGROUND

Plaintiffs Josalyn Conley, Shelley Moore, and Kathy Walston ("Plaintiffs")¹ filed suit against Defendant King County Juvenile Court Services ("King County") after

¹Plaintiffs are African-American and long-time King County employees who work as Juvenile Probation Counselors supervising incarcerated youth and assisting courts in adjudicating their cases.

1 receiving reprimands in 2000 for allegedly retaliating against another employee, Deborah
2 Augurson. Plaintiffs allege that King County discriminated against them based on their
3 race and union status, retaliated against them for participating in protected union
4 activities, and permitted a hostile work environment to exist. King County denies these
5 allegations and seeks summary judgment on all counts.

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7 The factual basis for Plaintiffs' claims primarily stems from a series of events in
8 2000 involving multiple King County employees who filed complaints and cross-
9 complaints against each other alleging various forms of discrimination and retaliation.
10 Plaintiffs became involved when their co-worker and friend, Carolyn Williams, was
11 named in one of the complaints. While seeking to defend against the co-worker's
12 allegations, Williams sought Augurson's help in developing a cross-complaint against the
13 complaining co-worker for sexual harassment.² Augurson refused to help Williams and
14 as a result, Plaintiffs allegedly retaliated against her by refusing to talk with her, glaring
15 at her, and criticizing her work.

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17 Consequently, King County hired an independent investigator, Seattle attorney
18 Nalani Askov, to evaluate the large number of complaints and cross-complaints being
19 filed. Askov interviewed the complaining parties and alleged witnesses, concluded that
20 Plaintiffs retaliated against Augurson, and ultimately recommended that King County
21 separate Plaintiffs and assign them to different work units. After receiving this report,
22 King County terminated Williams and issued letters of reprimand to Plaintiffs who
23 challenged the letters by filing grievances with their union.³ Although King County later
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27 ²Augurson allegedly witnessed the complaining co-worker use inappropriate behavior
toward another employee.

28 ³Williams filed a separate action in this district captioned C04-5034 RBL.

1 agreed to remove the reprimand letters from Plaintiffs' files, it is unclear if the letters
2 were actually removed.

3 In addition, Plaintiff Walston alleges that King County treated her less favorably
4 than another white employee, Kelli Thompson, who frequently visited off-site work
5 locations and was allowed to work from home, unlike other employees. Walston began
6 investigating Thompson's work absences by talking to other co-workers about
7 Thompson's professionalism and sent a memorandum detailing her absences to their
8 immediate supervisors in mid-1999. King County began investigating Walston's conduct
9 when Thompson filed a complaint against her and Williams alleging harassment and
10 hostile work environment claims. Although King County concluded that Thompson's
11 claims lacked sufficient evidence, King County issued a letter of reprimand⁴ to Walston
12 in October 1999 based on her admitted, self-initiated investigation into Thompson's work
13 ethic and character. Walston argues that King County's decision to discipline her for
14 investigating Thompson and to allow Thompson to work from home, constitutes
15 discriminatory treatment.
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18 III. DISCUSSION

19 A. Legal Standard

20 Summary judgment is appropriate when the moving party demonstrates that there
21 is no genuine issue as to any material fact and that the moving party is entitled to
22 judgment as a matter of law. Fed. R. Civ. P. 56(c). The party moving for summary
23 judgment "bears the initial responsibility of informing the district court of the basis for its
24 motion, and identifying those portions of 'the pleadings, depositions, answers to
25 interrogatories, and admissions on file, together with the affidavits, if any,' which it
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28 ⁴King County later rescinded Walston's letter of reprimand, issuing a letter of counseling instead.

1 believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v.
2 Catrett, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)).

3 Once the moving party meets its initial responsibility, the burden shifts to the non-
4 moving party to establish that a genuine issue as to any material fact exists. Matsushita
5 Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Evidence
6 submitted by a party opposing summary judgment is presumed valid, and all reasonable
7 inferences that may be drawn from that evidence must be drawn in favor of the non-
8 moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). The non-
9 moving party cannot simply rest on its allegation without any significant probative
10 evidence tending to support the complaint. See U.A. Local 343 v. Nor-Cal Plumbing,
11 Inc., 48 F.3d 1465, 1471 (9th Cir. 1995). “[A] complete failure of proof concerning an
12 essential element of the non-moving party’s case necessarily renders all other facts
13 immaterial.” Celotex, 477 U.S. at 322-23.
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15 **B. Racial Discrimination**

16 Plaintiffs allege that King County unlawfully discriminated against them based on
17 their race in violation of 42 U.S.C. §§ 1981 and 1983, and RCW § 49.60.180(3).⁵
18 Although Plaintiffs have elected to pursue their employment discrimination claims under
19 the federal civil rights statutes (rather than the federal employment discrimination statute,
20 Title VII), the evidentiary framework articulated in McDonnell Douglas Corp. v. Green,
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23 ⁵Although not discussed by either party, the court notes that Plaintiffs fail to allege in their
24 complaint, or discuss in their opposition briefing, a King County policy, custom, or practice
25 related to the alleged discrimination. This omission is particularly troubling given that municipal
26 liability under § 1983 is predicated on such a showing and provides grounds for dismissal. E.g.,
27 Monell v. Dep’t of Soc. Serv., 436 U.S. 658, 694 (1978); Ortez v. Washington County, 88 F.3d
28 804, 811 (9th Cir. 1996) (affirming dismissal of county defendant where § 1983 plaintiff failed to
show that defendant’s allegedly discriminatory actions flowed from a county policy, custom, or
practice).

1 411 U.S. 792, 802-05 (1973), guides the court's review of the evidence on summary
2 judgment. Manatt v. Bank of Am., NA, 339 F.3d 792, 797 (9th Cir. 2003) ("those legal
3 principles guiding a court in a Title VII dispute apply with equal force in a § 1981
4 action"); Mustafa v. Clark County Sch. Dist., 157 F.3d 1169, 1180 n.11 (9th Cir. 1998)
5 (applying same standards for disparate treatment claims under Title VII to §§ 1981 and
6 1983); Hill v. BCTI Income Fund-I, 23 P.3d 440, 446 (Wash. 2002) (applying McDonnell
7 Douglas framework to state law discrimination claim).

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9 Under the McDonnell Douglas framework, Plaintiffs bear the initial burden of
10 establishing a prima facie case of discrimination by showing that they: (1) are members
11 of a protected class, (2) who performed according to King County's legitimate
12 expectations, (3) suffered an adverse employment action, and (4) were treated less
13 favorably than other similarly situated employees outside the protected class, or other
14 circumstances surrounding the adverse employment action give rise to an inference of
15 discrimination.⁶ Fonseca v. Sysco Food Servs. of Ariz., Inc., 374 F.3d 840, 847 (9th Cir.
16 2004). The amount of proof required to establish a prima facie case "is minimal and does
17 not even need to rise to the level of preponderance of the evidence." Wallis v. J.R.
18 Simplot Co., 26 F.3d 885, 889 (9th Cir. 1994).

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20 After establishing a prima facie case of racial discrimination, the burden shifts to
21 King County to produce evidence demonstrating that a legitimate, nondiscriminatory
22 reason for the alleged adverse employment action exists.⁷ McDonnell Douglas, 411 U.S.
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25 ⁶Although these factors differ slightly from those originally articulated in McDonnell
26 Douglas, "it is widely recognized that the test is a flexible one." McGinest v. GTE Serv. Corp.,
360 F.3d 1103, 1122-23, n.17 (9th Cir. 2004).

27 ⁷The burden of persuasion remains on Plaintiffs at all times, despite the fact that the
28 burden of production shifts to King County at this stage. St. Mary's Honor Ctr. v. Hicks, 509
U.S. 502, 511 (1993).

1 at 802. Once King County satisfies this burden of production, the presumption that it
2 discriminated “drops from the case,” and Plaintiffs must show that King County’s alleged
3 reason for reprimanding Plaintiffs was merely a pretext for discrimination. St. Mary’s
4 Honor Center v. Hicks, 509 U.S. 502, 511 (1993). A plaintiff may prove pretext either by
5 direct or circumstantial evidence. Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054,
6 1062 (9th Cir. 2002). Relying on circumstantial evidence to show pretext, however,
7 requires a plaintiff to “put forward specific and substantial evidence challenging the
8 credibility of the employer’s motive.” Vasquez v. County of Los Angeles, 349 F.3d 634,
9 642 (9th Cir. 2003).

11 Here, Plaintiffs have failed to bring forth sufficient evidence to establish a prima
12 facie case of discrimination. Although Plaintiffs reference the McDonnell Douglas
13 framework, they make no effort to apply the four-prong test for establishing a prima facie
14 case of discrimination. Rather, Plaintiffs argue generally that “race impermissibly
15 permeated decisions at all levels” and provide four examples, only one of which
16 specifically relates to Plaintiffs. Nonetheless, it is clear that Plaintiffs belong to a
17 protected class (African-American), the quality of their work was unquestioned, and that
18 their letters of reprimand constitute an adverse employment action. Fonseca, 374 F.3d at
19 847 (“A warning letter or negative review also can be considered an adverse employment
20 action.”).

22 What is unclear, however, is whether Plaintiffs were treated less favorably than
23 other employees outside the protected class, or if other circumstances suggest an
24 inference of discrimination exists. Plaintiffs fail to bring forward any evidence
25 demonstrating that they were treated less favorably than other employees involved in the
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1 melee of complaints and cross-complaints, and Plaintiffs' counsel essentially conceded
2 that the record lacked comparator evidence at oral argument.⁸

3 Plaintiffs' contention at oral argument that other circumstances surrounding the
4 reprimands give rise to an inference of discrimination, lacks merit. The fact that King
5 County asked Askov and other applicants for the independent investigator position, what
6 process they would use to determine whether "racial- and sexual-harassment overtones"
7 existed, does not mean that Plaintiffs suffered from racial discrimination. Hawkins Decl.,
8 Exh. 12. Further, a supervisor's comment in an internal memorandum that many of the
9 problems in Plaintiffs' unit "appear to be demarcated across racial lines" and
10 consequently recommending an independent investigation, does not suggest that racial
11 discrimination existed or that Plaintiffs suffered from such discrimination. Id., Exh. 11.
12 Evidence of racial tension, without more, is not equivalent to evidence of racial
13 discrimination. Similarly, deposition testimony from two King County employees who
14 acknowledged hearing that racial complaints existed in Plaintiffs' unit, also fails to
15 suggest that Plaintiffs suffered racial discrimination. Id., Exhs. 58, 60. Neither
16 employee's deposition testimony contains any specific information regarding who made
17 the complaints, what allegedly happened, or any reference to Plaintiffs. Finally,
18 Plaintiffs' argument that there is "absolutely nothing in the record which supports any
19 sort of reprimand" for Moore, based on Askov's failure to name her in preliminary
20 investigative reports, ignores Augurson's deposition testimony to the contrary, and
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26 ⁸For example, there is no evidence in the record that Augurson complained about non-
27 African-American employees retaliating against her that King County either ignored, or chose not
28 to resolve with discipline. Further, there is no evidence in the record that King County failed to
discipline non-African-American employees charged with retaliatory behavior.

1 therefore fails to support an inference of discrimination. Pls.’ Opp. at 13; Goldstein Decl.
2 at 16-17.⁹

3 Plaintiff Walston’s additional claim that King County discriminated against her by
4 issuing her a separate letter of reprimand a year earlier for admittedly investigating a co-
5 worker’s work ethic and character, also fails to demonstrate that King County treated her
6 less favorably than other employees, and fails to support an inference of discrimination.
7 Walston fails to bring forward any evidence suggesting that King County failed to
8 discipline a white employee who, like Walston, admitted to conducting a self-initiated
9 investigation of another employee’s work performance that involved inquiries of other co-
10 workers into the employee’s work ethic and character. Moreover, as Plaintiffs’ counsel
11 conceded at oral argument, Walston’s race discrimination claim on this basis is time
12 barred, given that the alleged discriminatory act occurred in October 1999 and Plaintiffs
13 waited until December 2003 to file their notice of claim, and until February 2004 to file
14 suit. See Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369, 383 (2004) (applying four-
15 year statute of limitations to § 1981 claims for wrongful termination, failure to transfer,
16 and hostile work environment); Conway v. Standard Ins. Co., 23 F. Supp. 2d 1199, 1200-
17 01 (E.D. Wash. 1998) (plaintiff’s state law discrimination and § 1983 claims are time
18 barred by three-year statute of limitations).

19 Plaintiffs’ failure to bring forward evidence on the fourth element of the
20 McDonnell Douglas framework – an essential element of a prima facie case – requires
21 dismissal of their race discrimination claim. Celotex, 477 U.S. at 322-23 (“a complete
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26 ⁹Additionally, Plaintiffs fail to bring forward any evidence suggesting that a person in a
27 position of authority at King County made “ethnically biased remarks” of any kind, which are
28 sufficient alone to survive summary judgment. Fonseca, 374 F.3d at 848 (citing Mustafa v. Clark
County Sch. Dist., 157 F.3d 1169, 1180 (9th Cir. 1998)).

1 failure of proof concerning an essential element of the non-moving party's case
 2 necessarily renders all other facts immaterial"). Thus, the court GRANTS Defendant's
 3 motion for summary judgment on Plaintiffs' race discrimination claim.¹⁰

4 **C. Union Discrimination and Retaliation**

5 Plaintiffs also allege that King County unlawfully discriminated and retaliated
 6 against them based on their decision to file grievances with their union and testify in
 7 favor of Williams at her arbitration. Plaintiffs' claims rest solely on RCW § 49.32.020
 8 which affords union and non-union employees the substantive right to be free from
 9 "interference, restraint, or coercion . . . in other concerted activities for the purpose of
 10 collective bargaining or other mutual aid or protections." Am. Compl. at ¶¶ 5.2-5.4;
 11 Pulcino v. Fed. Express Corp., 9 P.3d 787, 798 (Wash. 2000); Bravo v. Dolsen Co., 888
 12 P.2d 147, 151-52 (Wash. 1995). Washington courts have broadly defined "concerted
 13 activities" to include "the act of joining, belonging to, or voting against decertification of
 14 a labor union." Pulcino, 9 P.3d at 798-99. Similarly, Washington courts have broadened
 15 the definition of prohibited "interference, restraint, or coercion" beyond discharge to
 16 include a "wide range of actions," such as "threatening strikers with dismissal,
 17 intimidating strikers by videotaping their picket line, terminating those who participated,
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23 ¹⁰Even assuming Plaintiffs have brought forth sufficient evidence to establish a prima facie
 24 case of discrimination, King County has rebutted such showing with evidence that it issued letters
 25 of reprimand based on Askov's (an independent investigator) conclusions that Plaintiffs retaliated
 26 against Augurson and disciplined Walston based on her admitted, self-initiated investigation of a
 27 co-worker. Plaintiffs have not brought forth "specific" or "substantial" evidence challenging the
 28 credibility of King County's motives, by showing that its actions were either internally
 inconsistent or otherwise not believable, as required to show pretext. Vasquez, 349 F.3d at 642;
Fonseca, 374 F.3d at 849.

1 discouraging former strikers from seeking reemployment, and denying reinstatement to
2 former strikers who asked to return to available jobs.” Bravo, 888 P.2d at 153.¹¹

3 Here, Plaintiffs’ grievances and testimony at Williams’ arbitration likely qualify as
4 “concerted activities” under Washington courts’ broad interpretation of that phrase, but
5 the adverse employment actions they allegedly suffered fall far short of the activities that
6 Washington and federal courts have recognized constitute “interference, restraint, or
7 coercion.” Without citing any case authority for their position, Plaintiffs contend that
8 King County retaliated against them, in violation of RCW § 49.32.020, by (1) failing to
9 remove Moore and Conley’s letters of reprimand from their supervisor’s file, (2) failing
10 to remove Walston’s letter of reprimand from her main personnel file, (3) advising
11 Conley and Moore to “write up” an interaction with Augurson, (4) issuing Moore a letter
12 of reprimand for discourteous treatment of other employees a short time after testifying at
13 Williams’ arbitration, and (5) limiting Moore’s time in the lunch room after she
14 successfully grieved her letter of reprimand. Drawing all inferences in the light most
15 favorable to Plaintiffs, as the court must on summary judgment, the court finds that none
16 of these actions separately, or in the aggregate, constitute “interference, restraint, or
17 coercion” under the case law. The limited number of Washington cases interpreting
18 RCW § 49.32.020 have prohibited employers from dismissing (or threatening to dismiss)
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23 ¹¹ Washington courts’ construction of “interference, restraint, or coercion” is consistent
24 with federal courts’ interpretation of the parallel provision contained in the National Labor
25 Relations Act. Bravo, 88 P.2d at 153 (citing Hajoca Corp. v. Nat’l Labor Relations Bd., 872
26 F.2d 1169, 1177 (3d Cir. 1989) (threatening workers with dismissal) and Nat’l Labor Relations
27 Bd. v. Pizza Crust Co. of Penn., Inc., 862 F.2d 49, 51 (3d Cir. 1988) (coercive questioning of
28 workers)); see also Bachelder v. Amer. West Airlines, Inc., 259 F.3d 1112, 1123 (9th Cir. 2001)
(reviewing case law and recognizing that awarding preferential seniority rights to striker
replacements, threatening to shut down a plant, and conducting surveillance of employees meeting
with union organizer outside work constitute “interference, restraint, or coercion”).

1 employees for union activity, refusing to reinstate striking employees, and intimidating
 2 strikers by videotaping their union activity. E.g., Bravo, 888 P.2d at 153. None of the
 3 activity complained of by Plaintiffs resembles this activity and Plaintiffs provide no
 4 authority warranting such an extension. Thus, the court GRANTS Defendant's motion
 5 for summary judgment on Plaintiffs' "union discrimination" claim.¹²

6 **D. Hostile Work Environment**

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 8 Plaintiffs allege that King County has permitted a hostile work environment to
 9 exist with "lasting effects" on all of them. Pls.' Resp. at 18. Plaintiffs contend that they
 10 feel nervous, afraid, and uncomfortable at work based on King County's alleged anti-
 11 union discrimination. Although cast as a "hostile work environment claim," Plaintiffs
 12 appear to allege a general claim for emotional distress, rather than a typical hostile work
 13 environment claim under Title VII.¹³ Plaintiffs dedicate one page of their opposition brief
 14 to this claim, none of which discusses the Title VII standard, attempts to apply another
 15 standard, or cites any case or statutory authority. Consequently, the court construes
 16 Plaintiffs' "hostile work environment" claim as one for general emotional distress
 17 stemming from the alleged union discrimination and GRANTS Defendant's motion for
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 21 ¹² While King County's alleged adverse employment actions might constitute retaliation
 22 under Title VII, Plaintiffs filed their "union discrimination" claim solely under RCW § 49.32.020.
 23 See 42 U.S.C. § 2000e-3(a) (Title VII retaliation provision); Raad v. Fairbanks N. Borough Sch.
Dist., 323 F.3d 1185, 1196-97 (9th Cir. 2003) (establishing elements of a prima facie retaliation
 case under Title VII).

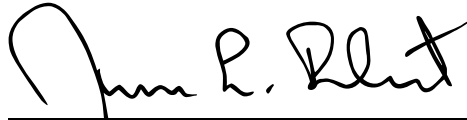
24 ¹³To survive summary judgment on a hostile work environment claim based on race or sex
 25 under Title VII, a plaintiff must show "(1) that he was subjected to verbal or physical conduct of a
 26 racial or sexual nature; (2) that the conduct was unwelcome; and (3) that the conduct was
 27 sufficiently severe or pervasive to alter the conditions of the plaintiff's employment and create an
 28 abusive work environment." Vasquez, 349 F.3d at 642; Washington v. Boeing Co., 19 P.3d
 1041, 1048 (Wash. Ct. App. 2000) (establishing substantially the same test under Washington
 law).

1 summary judgment based on the court's prior dismissal of Plaintiffs' union discrimination
2 claim.

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4 **IV. CONCLUSION**

5 For the reasons stated above, the court GRANTS Defendant's motion for summary
6 judgment (Dkt. # 17) dismissing Plaintiffs' claims in their entirety and directs the clerk to
7 enter judgment accordingly.

8 Dated this 24th day of August, 2005.

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12 JAMES L. ROBART
13 United States District Judge
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